

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: Gerrit KOPPERT

Art Unit: 1638

Application No.: 10/625,628

Confirmation No.: 9050

Examiner:

Filing Date: July 24, 2003

Washington, D.C.

Atty.'s Docket: K. Robinson

For: RAPHANUS WITH INCREASED ANTHOCYANIN LEVELS

Date: June 8, 2005

U.S. Patent and Trademark Office
Customer Service Window
Randolph Building, Mail Stop AMENDMENT
401 Dulany Street
Alexandria, VA 22314

Sir:

Transmitted herewith is a [XX] REPLY TO ELECTION REQUIREMENT in the above-identified application.

[XX] Small entity status of this application under 37 CFR 1.9 and 1.27 has been established by a verified statement previously submitted

[] A verified statement to establish small entity status under 37 CFR 1.9 and 1.27 is enclosed.

[XX] No additional fee is required.

The fee has been calculated as shown below:

	(Col. 1)		(Col. 2)	(Col. 3)
	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NO. PREVIOUSLY PAID FOR	PRESENT EXTRA EQUALS
TOTAL	* 17	MINUS	** 20	0
INDEP.	*	MINUS	*** 3	0
FIRST PRESENTATION OF MULTIPLE DEP. CLAIM				

SMALL ENTITY	
RATE	ADDITIONAL FEE
x 25	\$
x 100	\$
+ 180	\$
ADDITIONAL FEE TOTAL	
\$	

OTHER THAN SMALL ENTITY	
RATE	ADDITIONAL FEE
x 50	\$
x 200	\$
+ 360	\$
TOTAL	
\$	

* If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.

** If the "Highest Number Previously Paid for" IN THIS SPACE is less than 20, write "20" in this space.

*** If the "Highest Number Previously Paid for" IN THIS SPACE is less than 3, write "3" in this space.

The "Highest Number Previously Paid For" (total or independent) is the highest number found from the equivalent box in Col. 1 of a prior amendment of the number of claims originally filed.

[XX] Conditional Petition for Extension of Time

If any extension of time for a response is required, applicant requests that this be considered a petition therefor.

[] It is hereby petitioned for an extension of time in accordance with 37 CFR 1.136(a). The appropriate fee required by 37 CFR 1.17 is calculated as shown below:

Small Entity
Response Filed Within
[] First - \$ 60.00
[] Second - \$ 225.00
[] Third - \$ 510.00
[] Fourth - \$ 795.00
Month After Time Period Set

Other Than Small Entity
Response Filed Within
[] First - \$ 120.00
[] Second - \$ 450.00
[] Third - \$ 1020.00
[] Fourth - \$ 1,590.00
Month After Time Period Set

[] Less fees (\$) already paid for month(s) extension of time on .

[] Please charge my Deposit Account No. 02-4035 in the amount of \$.

[] Credit Card Payment Form, PTO-2038, is attached, authorizing payment in the amount of \$.

[] A check in the amount of \$ is attached (check no.).

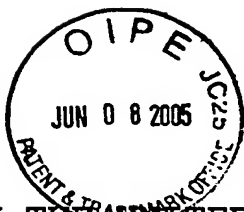
[XX] The Commissioner is hereby authorized and requested to charge any additional fees which may be required in connection with this application or credit any overpayment to Deposit Account No. 02-4035. This authorization and request is not limited to payment of all fees associated with this communication, including any Extension of Time fee, not covered by check or specific authorization, but is also intended to include all fees for the presentation of extra claims under 37 CFR §1.16 and all patent processing fees under 37 CFR §1.17 throughout the prosecution of the case. This blanket authorization does not include patent issue fees under 37 CFR §1.18.

BROWDY AND NEIMARK

Attorneys for Applicant(s)

By: 
Sheridan Neimark
Registration No. 20,520

Facsimile: (202) 737-3528
Telephone: (202) 628-5197



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ATTY.'S DOCKET: KOPPERT =1A

In re Application of:)	Art Unit: 1638
)	
Gerrit KOPPERT)	Examiner: K. Robinson
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Appln. No.: 10/625,628)	Washington, D.C.
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Date Filed: July 24, 2003)	Confirmation No. 9050
)	
For: RAPHANUS WITH INCREASED...)	June 8, 2005

REPLY TO ELECTION REQUIREMENT

Honorable Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window
Randolph Building, Mail Stop Amendment
401 Dulany Street
Alexandria, VA 22314

Sir:

The Office Action mailed May 9, 2005, entirely in the nature of a requirement for election of species, has been carefully reviewed.

As best understood, the PTO has required applicant to elect a single species from among what the Office Action identifies as three (3) patentably distinct "species" allegedly being claimed. As applicant must make an election even though the requirement is traversed, applicant hereby provisionally and respectfully elects the "species" ATTC No. PTA-3630 with traverse and without prejudice. The Office

Action indicates that claims 1-3 and 5-17 are generic; applicant agrees that these claims cover the elected "species", and further submits that claim 4 also covers the elected subject matter, whereas all of applicant's claims cover the elected subject.

Applicant respectfully submits that the requirement is incorrect and should be withdrawn because the claims **are not directed** to the species to the Species CGN 6924 and CGN 7240.¹ At most, and the closest the claims would come to these species, would be that they are directed to plants derived from the lines CGN 6924 and CGN 7240 by crossing and breeding. Applicant again respectfully emphasizes that the claims are not directed to these two lines themselves, such lines being already known in the prior art.

Thus, to be absolutely clear, the elected subject matter, i.e. line ATTC No. PTA-3630, is actually a line that is **derived** from lines CGN 6924 and CGN 7240 by crossing and breeding.

To summarize, there are not three species being claimed, but only one: plants derived from lines CGN 6924 and CGN 7240 by crossing and breeding, and having the required anthocyanin level, one such plant (the elected species) being

¹ Applicant agrees that the three "species" would **not** be obvious variants of one another.

In re of Appln. No. 10/625,628
Reply Dated Jne 8, 2005
OA dated: May 9, 2005

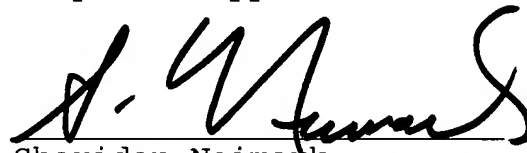
ATTC No. PTA-3630, which is certainly patentably distinct from
CGN 6924 and CGN 7240.

Applicant respectfully awaits the results of an
examination on the merits.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant(s)

By

A handwritten signature in black ink, appearing to read "S. Neimark", written over a horizontal line.

Sheridan Neimark
Registration No. 20,520

SN:jaa
Telephone No.: (202) 628-5197
Facsimile No.: (202) 737-3528
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